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CONFIRMATION NO. FILING DATE FIRST NAMED INVENTOR ATTORNEY DOCKET NO. APPLICATION NO. 9712 60019630-0038 10/091,784 03/06/2002 Wayne M. Barnes EXAMINER 06/30/2004 26263 7590 SONNENSCHEIN NATH & ROSENTHAL LLP SPIEGLER, ALEXANDER H P.O. BOX 061080 PAPER NUMBER ART UNIT WACKER DRIVE STATION, SEARS TOWER CHICAGO, IL 60606-1080 1637

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
	10/091,784	BARNES ET AL.
Office Action Summary	Examiner	Art Unit
	Alexander H. Spiegler	1637
The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence address
A SHORTENED STATUTORY PERIOD FOR REPLY THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply If NO period for reply is specified above, the maximum statutory period w Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	36(a). In no event, however, may a reply be time within the statutory minimum of thirty (30) days will apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	nely filed s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).
Status		
1) Responsive to communication(s) filed on <u>23 November 2003</u> .		
	action is non-final.	
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.		
Disposition of Claims		
4) ☐ Claim(s) 1-14 is/are pending in the application. 4a) Of the above claim(s) is/are withdraw 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) 1-14 are subject to restriction and/or expressions.	vn from consideration.	
Application Papers		
9)☐ The specification is objected to by the Examiner.		
10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.		
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.		
Priority under 35 U.S.C. § 119		
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority documents 2. Certified copies of the priority documents 3. Copies of the certified copies of the prior application from the International Bureau * See the attached detailed Office action for a list	s have been received. s have been received in Application ity documents have been received (PCT Rule 17.2(a)).	on No ed in this National Stage
Attachment(s)		
1) Notice of References Cited (PTO-892)	4) Interview Summary	
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date	Paper No(s)/Mail Da 5) Notice of Informal Pa 6) Other:	ite atent Application (PTO-152)

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DETAILED ACTION

Election/Restrictions

- 1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-7 and 14, drawn to kits comprising a source of phosphate ions and a source of magnesium ions, classified in class 422, class 61, for example.
 - II. Claims 8-13, drawn to kits comprising a magnesium salt, classified in class 435,91.1 or Class 424, subclass 681, for example.
- 2. The inventions are distinct, each from the other because of the following reasons:

Inventions I-II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are kits comprising a source of phosphate ions and a source of magnesium ions and kits comprising a magnesium salt, which are different entities having differing biochemical structures, modes of operation, functions, and effects. For example, a kit comprising the reagents of Invention I could be used in a soil testing assay and a kit comprising the reagents of Invention II could be used in a purification, treatment, or diagnostic assay. Accordingly, because these inventions are not disclosed as capable of use together and they have different modes of operation, different functions, and different effects, each of these inventions is unrelated.

3. Because these inventions are distinct for the reasons given above and have acquired a different status in the art as demonstrated by their different classification and recognized divergent subject matter and because inventions I-II require different searches that are not co-

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extensive, examination of these distinct inventions would pose a serious burden on the examiner and therefore restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1,600

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Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander H. Spiegler whose telephone number is (571) 272-0788. The examiner can normally be reached on Monday through Friday, 7:00 AM to 3:30 PM.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Gary Benzion can be reached at (571) 272-0782.

Papers related to this application may be faxed to Group 1637 via the PTO Fax Center using the fax number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public. For more information about the PAIR system, see http://pair-direct.uspto.gov.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Alexander H. Spiegler

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June 25, 2004